

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 497 of 1999.

Reserved on: 3.5.2007.

Date of decision: 25.5.2007.

State of H.P. ... Appellant

Versus

Jeet Singh & Ors. ... Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?¹ No.

For the appellant: Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondents: Mr. R.K. Gautam, Sr. Advocate with Ms. Archana Dutt, Advocate.

V.K. Ahuja, J.:

This appeal has been filed by the appellant/State of H.P. against the judgment of the Court of learned Sub Divisional Judicial Magistrate, Nalagarh, dated 28.6.1999, vide which the respondents were acquitted of the charge framed against them under Sections 325/506 read with Section 34 I.P.C..

Briefly stated the facts of the case are that on 17.11.1995 at about 1.30P.M., a report was lodged by one Bachna Ram in regard to the occurrence having taken place in the land in his possession. He had alleged in the report that he learnt at about 12.00 noon that Jeet Singh etc. had ploughed his fields and a quarrel was taking place. When

¹Whether reporters of Local Papers may be allowed to see the judgment? Yes.

he reached there he found that his son Hardev Singh and nephew Bhagat Dass were being given beatings by the other party and Kuldeep Kaur, his daughter-in-law and Gurmitto and Banti, wives of his nephews were also present who were being abused by the other party. On this report, a rapat was entered by the police and the case was investigated. After investigation, the challan was filed before the learned trial Court who tried the respondents as detailed above leading to their acquittal.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant and Mr. R.K. Gautam, Sr. Advocate with Ms. Archana Dutt, counsel for the respondents and have gone through the record.

The submissions made by the learned Additional Advocate General, for the appellant were that there were many eye witnesses to the occurrence but their statements were not relied upon by the learned trial Court in view of the minor contradictions and infirmities in the statements of the prosecution witnesses and for the reasons that they were related to one another. It was submitted that the complainant party had suffered injuries and there was no occasion for them to falsely implicate the accused persons in case no occurrence had taken place.

On the other hand, the learned counsel for the respondents submitted that the complainant party was aggressor party since the accused persons were in possession of the land in question. It was also submitted that the independent witnesses were available but they were not examined and, therefore, the statements of relatives also becomes suspicious. It was also pointed out that there are contradictions in the statements of the prosecution witnesses. It was also submitted that there is an admission made by some witnesses that the bullocks started

running and resultantly, the persons fell down on the ground and suffered injuries. Thus no injuries were inflicted by the accused persons. It was submitted that a reasonable view has been taken by the learned trial Court of the statements of the witnesses which view cannot be said to be perverse calling for an interference by this Court.

Coming to the evidence PW-1 Bachna Ram has stated that when he reached the spot, he found that Malkiat Singh, Sudershan, Raghuvir and Phuman Singh were quarreling and Raghuvir Singh was having a Sangal with which he hit on the arm of Bhagat Dass as well as on the shoulder of Hardev. He further stated that accused persons pulled hairs of Kuldeep and Gurmitto with their hands and fists. He further stated that the accused persons were ploughing the fields which were in his possession and he is a tenant since long. He further stated that apart from him Hardev came to the spot who suffered injuries and his sons etc. were saved by him and his daughters-in-law. He admitted that a case is going on with the other party before the Tehsildar which was going on in the year 1977-75. He denied that a stay order has been issued against them. The police came to the spot on the next date. He admitted that the land where the quarrel took place is being cultivated by Phuman Singh and Jagat Singh meaning thereby that it was not being cultivated by him.

PW-2 Hardev Singh has stated that they are owners of the land as well as are in cultivation and on 17.11.1995 the accused persons came there to plough the fields but they did not allow them. He stated that when he reached the spot, the accused persons were giving beatings with fists to the ladies and when his brother Bhagat Singh came there, he was hit with a Sangal on his left arm by Raghuvir and he

suffered fracture. He was also given a blow on the shoulder with Sangal and accused persons gave threat to life which was never so stated by PW-1 Bachna Ram. He stated that accused persons want to cultivate their land and they prevented them. He admitted that a case is going on with the accused persons before the Tehsildar and in the year 1977 also, a case was made out. He was confronted with his statement wherein he had not mentioned about the giving of beatings on his shoulder with Sangal. He had stated that the police came to the spot at 12.00, whereas PW-1 Bachna Ram has stated that the police came on the spot on the next date. PW-1 Bachna Ram had also stated that the ladies had released the jot of bullocks which has been so stated by this witness also. He further admitted that when they stopped the bullocks they started running here and there alongwith the plough. He denied that Bhagat Dass fell because of the running of the bullocks. He denied that they suffered injuries by fall.

PW-4 Smt. Gurmeet Kaur has stated that the accused persons had ploughed their fields and she alongwith Kuldeep and Banti prevented the accused persons who gave them beatings, pulled their hair and gave beatings with fists. She stated that Raghuvir gave blow on the person of Bhagat Dass and Hardev with a Sangal. She also stated that they stood in front of the bullocks and Bhagat Dass and Hardev also stood before the bullocks and bullocks started running under fear and they also started running. She admitted that the bullocks struck Bhagat Dass and Hardev who fell down. She also admitted about the case going on before the Tehsildar.

PW-5 Smt. Kuldeep Kaur was tendered for cross-examination and tendering for cross-examination is no evidence in the

eyes of law. She admitted in cross-examination that she alongwith other male persons tried to stop the bullocks who start running out of fear and they also started going towards one side and some persons fell on the ground and suffered injuries again she stated that the injuries were suffered by a Sangal.

PW-7 Smt. Banti has stated that the accused party had come to take possession of the land and she alongwith Gurmitto and Kuldeep Kaur stopped them from ploughing the fields and Malkiat's son gave a blow on the person of Bhagat Dass with a Sangal on his left arm which was broken and her brother-in-law Hardev was given blow on his shoulder. She stated about the threat given by the accused persons at that time. She admitted in the cross-examination that they are having cases with accused, but no stay has been issued. She admitted that the case is going on in the Court of Tehsildar as well as in the Court of Sub Judge.

PW-11 Dr. Sanjeev Kapoor had proved the MLCs of Bhagwan Dass as well as that of Hardev Singh and stated about the injuries on their persons which were simple in nature. He referred to the fact that on x-ray fracture was found on the lower end of ulna of Bhagwan Dass but the said x-ray report has not been proved in evidence and, therefore, his opinion cannot be read in evidence.

On a perusal of the evidence led by the prosecution it is clear that there is no specific oral or documentary evidence on record to prove that the complainant party was in possession of the land where the occurrence took place. It had come up in evidence that when the accused persons tried to plough the fields, an objection was raised by the complainant party and the quarrel took place. In case the

complainant party was not in possession of the land and they had forcibly tried to prevent the accused persons from ploughing the fields, the accused persons were within their right to protect their possession and in case in that process some injuries are caused, they can take right of private defence. But that question does not arise since the evidence of the prosecution witnesses is quite contradictory in regard to the injuries and the admission made by some of the witnesses clearly proves that these injuries were not inflicted by the accused persons but they stood in front of the bullocks who started running here and there. Thus some injuries were caused on the person of the complainant party as discussed above. Once there is evidence to this effect that the injuries may have been sustained by fall by the complainant party, the statements made by the witnesses that these were inflicted by the accused persons cannot be accepted as correct. Most of the witnesses as discussed above have clearly admitted that the bullocks started running and the injuries were sustained in this manner. There is no specific evidence on record that any person from the nearby place came to the spot or saw the occurrence and, therefore, the submissions of the learned counsel for the respondents cannot be accepted that since other evidence was available, no reliance can be placed upon the statements of related witnesses. The learned trial Court has discussed oral evidence and had also referred to the infirmities and the contradictions in the statements of the witnesses. The rapat lodged by the complainant and the history given in the MLCs cannot be used as substantive evidence by referring to the discrepancies or contradictions in these two versions until and unless the person who lodged the report or the person who gave alleged history is not confronted at the time of his examination

in the Court. However, sum total of the discussion remains the same that the learned trial Court had taken a view that the prosecution case does not stand established and these findings cannot be said to be perverse calling for an interference by this Court and as such, there is no merit in the appeal filed by the appellant and is liable to be dismissed. Accordingly, the appeal filed by the appellant is dismissed. Bail bonds stand discharged forthwith. A copy of the judgment along with record be sent to the concerned Court.

May 25, 2007
(BSS)

(V.K. Ahuja),
Judge